



Virginia
Regulatory
Town Hall

Periodic Review and Retention of Existing Regulations Agency Background Document

Agency Name:	Department of Environmental Quality
VAC Chapter Number:	9 VAC 15-10
Regulation Title:	Public Participation Guidelines
Action Title:	Periodic Review
Date:	July 17, 2001

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to retain an existing regulation.

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

The Public Participation Guidelines establish procedures to be used for soliciting the input of interested persons in the formation and development, amendment or repeal of regulations in accordance with the Administrative Process Act. The Guidelines include provisions for petitioning for rulemaking, establishing and maintaining mailing list(s) of interested persons, the use of advisory committees, and the content of notices issued at the Notice of Intent and Notice of Public Comment Period stages.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or

discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

This regulation is required by the Administrative Process Act (Section 9-6.14:1 et seq. of the Code of Virginia). Section 9-6.14:7.1 et seq. sets forth requirements for public participation during rulemaking. Specifically, Section 9-6.14:7.1.D requires that "Public participation guidelines for soliciting the input of interested parties in the formation and development of its regulations shall be developed, adopted and utilized by each agency..." Agencies must follow these guidelines when they are adopting a new regulation, amending an existing regulation or repealing an existing regulation.

The Department's basic law at Section 10.1-1182 et seq. authorizes the department to adopt regulations.

There is no federal statute or regulation that requires states to adopt regulations governing public participation in the rulemaking process.

The Guidelines exceed the minimum requirements of the APA in several respects. However, the requirements are imposed on the department, not on the public. Also, it is important to note that the requirements are there to ensure consistency on the part of the department during all phases of the rulemaking process, citizens have access to information and procedures of the department and citizens are allowed numerous opportunities to provide comment on actions undertaken by the department.

Areas in which the Guidelines exceed the minimum requirements of the APA are:

- The Guidelines require publication of a Notice of Intended Regulatory Action (NOIRA) which incorporates the requirements of the APA and requires the department to provide additional information on the proposed regulatory action including a description of alternatives available to meet the need, a request for comments on the proposed action including comments on costs and benefits of the stated alternative and any other alternatives, and a statement inviting comment on whether the agency should use the participatory approach (under certain conditions). The Guidelines also require the department to hold at least one public meeting no less than 30 days after the publication of the NOIRA, unless the department decides to proceed without holding a public meeting.

- At the Notice of Public Comment (NOPC) stage, the Guidelines place additional requirements on the department for informing the public of the proposed regulatory action including the distribution of a NOPC to interested citizens (mailing lists) which contains the information required by the Registrar plus additional information including a request for comments on the costs and benefits of the proposal or any other alternatives; the date, time and place of at least one public hearing; a discussion of the beneficial impacts of the proposed regulation; an explanation of the need for the proposed regulation and potential consequences that may result in the absence of the regulation; a description of provisions of the proposed regulation which are more restrictive than applicable federal requirements and why they are

needed; a discussion of alternatives that were considered and whether the department believes the proposed regulation is the least burdensome alternative to the public that fully meets the stated purpose of the proposed regulation; and a schedule for evaluating the need and effectiveness after the regulation is adopted.

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

No comment was received as a result of the Notice of Periodic Review published in the Virginia Register.

Effectiveness

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. Please assess the regulation's impact on the institution of the family and family stability. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

The purpose of the Guidelines is to establish standard procedures for public input into the adoption, amendment or repeal of the department's regulations and provide the public with assurances that all regulatory actions will be processed by the department in the same manner, unless exempt from the APA. In addition, the Guidelines assure public access to the process at each stage and establish the means for providing notice to the public.

The Guidelines are considered essential for the efficient and economical performance of an important government function because it establishes predictable guidelines to be used by the department during all phases of the regulatory process. It also sets out a predictable timetable for the public to provide meaningful comment on the effects of a proposed action on their health, safety and welfare.

The Guidelines are written in basic, nontechnical language in order to be easily understood by the general public. They clearly state the requirements placed on the department and clearly indicate opportunities for public involvement and information available for public consumption.

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

The department does not believe there are any acceptable alternatives that are less burdensome or less intrusive on the public for achieving the purpose of the regulation. The Guidelines are mandated by state law, they are intended to ensure that the public has opportunities and information necessary to participate in the regulatory process in a timely fashion, and they place requirements primarily on the department.

Recommendation

Please state that the agency is recommending that the regulation should stay in effect without change.

The department recommends that the Public Participation Guidelines be retained without change.

Family Impact Statement

Please provide an analysis of the regulation's impact on the institution of the family and family stability including the extent to which it: 1) strengthens or erodes the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourages or discourages economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthens or erodes the marital commitment; and 4) increases or decreases disposable family income.

The Guidelines do not directly impact the institution of family and family stability.